

REMARKS

This amendment is made in response to the Office action dated October 9, 2007. The amendment cancels the subject matter from the claims that relates to lysing HBB and the use of phage in pharmaceutical settings. Further, the amendment reintroduces those claims canceled in reliance upon the indication of allowability in the first action on the merits. Also enclosed is a Declaration by Dr. Richard Carlton which directly addresses the issues raised by the Examiner with respect to the reproducibility of isolating phage that lyse *Methylobacterium*. Claims 1, 2, 4, 5, 7-10, 23, 24, 49-52 and 57-66 are pending. Reconsideration is respectfully requested.

Restriction Requirement

Applicants continue to maintain the traversal of the restriction requirement for the reasons of record. This traversal also applies to newly added Claims 57-66. Upon an indication that the products of Claim 1 are allowable, the methods of using the same will not require any additional burden in examination or search and rejoinder is respectfully requested.

35 USC 112, first paragraph

Claims 1, 3-5, 23, 24, 36, 39, 40, 47, 49-52 and 55 have been rejected as failing to comply with the written description requirement. In support of the rejection, the Examiner asserts that the claims, in defining the class of products by their function and not their structure, lacks sufficient written description. Applicants respectfully disagree. Many known products and patent claims are defined primarily by their function or properties. The class of “surfactants” or “herbicides” are just such classes. Claims directed to antibodies that bind to a given antigen are directly analogous and are commonplace. Indeed, this is the very kind of claim that the court found described and enabled in *In re Wands*, discussed in detail in the first action on the merits. Indeed, these terms are the best means for describing the products. The claims do provide substantial structural limitations as well, i.e., they are bacteriophage. The structure provided in the use of this term is directly analogous to the structure provided by the word “antibody.”

Like in Wands, this applicant was clearly in possession of the class as evidenced by the specific bacteriophage described in the specification, the bacteriophage deposited with the ATCC and the fact that the methods described are reproducible, as evidenced by the Declaration submitted by Dr. Carlton enclosed herewith. No more is required under the law.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned at (978) 251-3509.

Respectfully submitted,

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